THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P. NO. 28480 of 1998

DATED: 30-03-2007

Between:-

Kasi Marideswara Rao s/o Subba Rao, aged about 38 years, occ: Agricultural Labour, R/o Kandikuppa village, Katrenikona Mandal, East Godavari District and another

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PETITIONERS

And

Varasala Arjana Rao s/o Yellaiah, aged about 50 years, occ: Agriculture, R/o Bojjavaripeta, Hamlet of Kandikuppa village, Katrenikona mandal, East Godavari District and others.

..RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

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O R D E R

This writ petition is filed seeking a Writ of Mandamus declaring the action of the fourth respondent in issuing the impugned notice Ref.B.No. 288/98, dated 14.08.1998 as arbitrary and illegal and consequently direct the official respondents not to evict the petitioner from the house bearing No. 5-23/1, in Survey No. 278/1, situated at Kandikuppa village, Katrenikona Mandal, East Godavari District pursuant to the impugned notice Ref.B.No.288/98 dated 14.08.1998 pending disposal of the writ petition.

It is the case of the petitioners that they have approached Smt. Varasala Mahalaxmi for purchase of the land in survey No.278/1 of Kandikuppa village and accordingly she executed an agreement of sale in their favour in the year 1994 for the said land and since then they have been in peaceful possession and enjoyment of the said land. Subsequently, they have requested the villagers for giving them some portion of the land occupied by them since the land in their possession was not sufficient for construction of a house. Pursuant to their request, the villagers have given them some portion of land and accordingly they constructed a thatched house and living in the said house since a long time without any interference by obtaining Electricity service connection. The Mandal Revenue Officer, Katrenikona Mandal also issued the patta certificate to them on 01-08-

1998 and they have obtained the loan under Indira Awas Yojana and constructed a permanent house in place of thatched house. While so, the Mandal Revenue Officer, Katrenikona Mandal issued the impugned notice Ref.B.No.288/98, dated 14.08.1998 stating that the first respondent herein obtained the orders from the Hon'ble High Court in W.P. No. 19992 of 1998 seeking a direction to the respondents therein for taking necessary action for removing the encroachments and directed them to stop the construction. But the fact remains that they have constructed the house long back and living in the said house. In fact, they have not encroached any land as alleged by the first respondent. The official respondents are trying to evict them from the house pursuant to the orders obtained by the first respondent without making them as parties with a view to deprive their right of enjoyment of house property, which they have constructed by raising loan after granting patta certificate by the Government. Hence the present writ petition.

While admitting this writ petition, this Court, on 13.10.1998, granted interim direction to the official respondents not to evict the petitioners from the house bearing No. 5-23/1, in Survey No.278/1, situated at Kandikuppa village, Katrenikona Mandal, East Godavari District, pursuant to the impugned notice dated 14.8.1998. Subsequently, the unofficial respondents filed a petition to vacate the interim order dated 13-10-1998, and this Court after hearing both the learned counsel made the interim order absolute on 26.07.1999. The order reads as follows:

> "Heard. Perused the pleadings of the parties. The notice issued by the Mandal Revenue Officer dated 14.8.1998 impugned in the main writ petition does not reflect that the land in question is the Government land. In that view of the matter, there is no justification to vacate the interim order granted by this Court. If

there is any dispute between the petitioners and the respondent private party, they have to work out their remedies in the Civil Court. Hence, W.V.M.P. is dismissed and the interim order is made absolute."

Despite the fact that the notices are served, the Mandal Revenue Officer who issued the impugned notice has not come forward and filed any counter affidavit denying the said allegations.

Having heard the learned counsel for the petitioner and upon perusing the material on record, this Court is of the view that there is no other go except to accept the contention put forth by the learned counsel for the petitioner. Accordingly, the notice Ref.B.No.288/98 dated 14.08.1998 impugned in this writ petition is hereby set aside.

In the result, the writ petition is allowed and the impugned notice Ref.B.No.288/98 dated 14.08.1998 is hereby set aside. No costs.

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GOPALA KRISHNA

TAMADA,J
Dated: 30-03-2007
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